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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GCSA, INC., et al.,	
Plaintiffs and Respondents,	G051585
v.	(Super. Ct. No. 30-2014-00748095)
LUIS MARMOL et al.,	O P I N I O N
Defendants and Appellants.	

Appeal from an order of the Superior Court of Orange County, James Di Cesare, Judge. Reversed.

Orange Law Group, Madison Harbor and Jenos Firouznam-Heidari for Defendants and Appellants.

Fasel Law and Thomas A. Fasel for Plaintiffs and Respondents.

* * *

INTRODUCTION

Defendants Luis Marmol, Madison Harbor, ALC, Ali Parvaneh, and Barzin Barry Sabahat (collectively, defendants) appeal from an order denying their anti-SLAPP[1] motions pursuant to Code of Civil Procedure section 425.16, challenging plaintiffs GCSA, Inc., and Peter Shahi's (collectively, plaintiffs) malicious prosecution action against them. (All further statutory references are to the Code of Civil Procedure.) Defendants contend the trial court erroneously concluded plaintiffs demonstrated a probability of prevailing on their claim.

We reverse. Plaintiffs failed to carry their burden of showing a probability of prevailing on the merits of their malicious prosecution claim, as they did not make a prima facie showing of malice. The trial court therefore erred by denying the anti-SLAPP motions and we remand the matter with directions that the trial court grant the motions. In a nutshell, this case involves a business dispute between a seller of commercial property and his broker/agent. Although both sides (and their lawyers) feel strongly about their differing positions and the litigation that ensued, there is no evidence of malice.

BACKGROUND[2]

I.

SHAHI ACTS AS AGENT IN THE SALE OF MARMOL'S REAL PROPERTY TO TIEN HAN.

Shahi was a licensed California real estate agent who was employed by a real estate broker, GCSA, Inc. In 2005, Shahi, who had acted as Marmol's real estate

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[1] "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

[2] The facts contained in the background section are taken from the moving papers. If there is a dispute, this section points that out.

agent for several years, represented Marmol in the sale of real property that Marmol owned and was located in Santa Ana (the property). Shahi had assisted Marmol in his acquisition of and in the management of the property. Shahi had negotiated rental rates, dealt with defaulted tenants, collected rents, and was involved in property improvements for Marmol, who lived out of state. Shahi and Marmol spoke nearly every day. Shahi was "well aware" of the property's condition and the details for each tenant's tenancy, including that of Luis Mendoza who operated a meat market on the property. After Mendoza defaulted on his obligations under his lease, "Shahi was intimately involved in negotiations with him regarding his payment of rent . . . and his continued tenancy."[3]

With regard to the sale of the property, Shahi was "the sole source of communication" between Marmol and the buyer, Han; Marmol never met the buyer of the property. Marmol stated that Shahi was the "sole agent involved in preparing documents for the sale of the Property, which included the certificate of estoppel concerning Luis Mendoza's tenancy."[4] Marmol signed the estoppel certificate along with other documents. Although Shahi asserted in his declaration that Marmol "represented to [him] that the Estoppel Certificate he signed was accurate and truthful and [Shahi] had no reason to believe otherwise," Marmol stated he had not read the estoppel certificate or had it explained to him. As most pertinent to the issues in this appeal, Marmol did not read the estoppel certificate which contained incorrect information.

Marmol never questioned Shahi's work because Shahi was privy to all information concerning the property. Marmol relied on Shahi as his agent and friend to

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[3] In his declaration filed in opposition to Parvaneh and Madison Harbor, ALC's anti-SLAPP motion, Shahi denied knowing that Mendoza had executed a promissory note in connection with back rent due or knowing that Mendoza was behind in paying his rent at the property at the time of the sale of the property to Tien Han.

[4] In his declaration filed in opposition to Parvaneh and Madison Harbor, ALC's anti-SLAPP motion, Shahi asserted that Marmol *provided* him with an estoppel certificate and other documents. Shahi did not state who prepared the documents.

properly produce all the information and documentation needed for completion of the sale of the property. Marmol had no personal knowledge of whether Shahi provided Mendoza's promissory note to Han.

II.

HAN SUES MARMOL AND SHAHI FOR FAILURE TO DISCLOSE TENANT INFORMATION IN CONNECTION WITH THE SALE OF THE PROPERTY.

In February 2009, Han filed a lawsuit against Marmol in connection with the sale of the property (the Han action). Han's fourth amended complaint contained a claim for breach of contract against Marmol, alleging he had failed to (1) provide true and correct copies of rental agreements, service contracts, and the agreements pertaining to the operation of the property; (2) provide true and correct information and copies of statements of income and expense for the 12 months preceding acceptance; (3) provide true and correct estoppel certificates, but instead had provided a certificate which did not disclose that a tenant owed back rent, was not paying rent on time, and was not paying full rent; and (4) "disclose to Han 'adverse conditions materially affecting the property, or any material inaccuracy in disclosure, information, or representation,' provided to Han."

The fourth amended complaint also contained a cause of action for breach of fiduciary duty against Shahi, alleging Shahi "did not exercise the care required of real estate agents" and breached his fiduciary duty to Han by not disclosing tenant and other information related to the property. The fourth amended complaint alleged Shahi represented to Han that he was a licensed real estate agent who represented Marmol with regard to the property, but said he could also act as the agent for Han.

The trial court granted Marmol and Shahi's motion to compel the Han action to arbitration. Marmol was represented by Attorney Sherri Sharareh Shafizadeh; she also represented Shahi with whom she had a prior "friendship relationship." After

Marmol was sued by Han, Marmol told Shafizadeh that he believed he should sue Shahi. Marmol explained to Shafizadeh he had not been involved in communicating with or providing information to Han in connection with the sale of the property. Shafizadeh advised Marmol against suing Shahi, reasoning that Marmol needed Shahi on his side to prevail in the Han action. After Marmol was billed for legal services that Shafizadeh had provided to Shahi, Shafizadeh told Marmol that, based on Marmol's listing agreement with Shahi, Marmol was obligated to pay Shahi's attorney fees in the Han action. Neither Shafizadeh nor Shahi produced any such agreement and Marmol later discovered that no such obligation or listing agreement existed.

III.

MARMOL SUES PLAINTIFFS AND SHAFIZADEH AND THEREBY INITIATES THE UNDERLYING ACTION.

In 2011, Marmol filed a lawsuit against plaintiffs and Shafizadeh (the underlying action).[5] In September 2012, Marmol filed a third amended complaint in the underlying action, which contained claims for breach of fiduciary duty and professional negligence against Shafizadeh, claims for breach of fiduciary duty, negligence, and indemnity against plaintiffs, and a claim for misrepresentation and concealment against Shafizadeh and Shahi. Marmol was represented in the underlying action by Madison Harbor, ALC, and, inter alia, Attorneys Ali Parvaneh and Barzin Barry Sabahat.[6]

[5] In 2011, Marmol also requested mandatory fee arbitration regarding the fees he owed to Shafizadeh for her representation in the Han action. The arbitrator in the mandatory fee arbitration ruled there had been no conflict of interest and ordered Marmol to pay the fees that he owed to Shafizadeh.

[6] At some point, Marmol replaced Shafizadeh as his counsel in the Han action with the Madison Harbor, ALC, attorneys.

IV.

HAN FILES A REQUEST TO DISMISS SHAHI FROM THE HAN ACTION; SHAHI TESTIFIES AT THE HAN ACTION ARBITRATION AS A WITNESS FOR HAN; THE ARBITRATOR'S FINAL AWARD; HAN APPEALS; THE TRIAL COURT GRANTS PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IN THE UNDERLYING ACTION.

Han filed a request, dated March 7, 2013, to dismiss with prejudice Shahi as a defendant from the Han action. The next day, Shahi appeared at the arbitration hearing as a witness for Han and testified against Marmol.

The arbitrator's final award, dated May 22, 2013, stated the arbitrator had found that Marmol, "either personally or through Mr. Shahi, withheld the [Mendoza] promissory note from [Han], in breach of . . . the purchase agreement and in so doing denied [him] important information which might have informed [Han] that [his] prime tenant was probably unable to pay the agreed rent of $12,500. He compounded the problem by allowing [Han] to receive, and rely on, an Estoppel Certificate which falsely stated the landlord had given no concessions to the tenants and stated the *present* rent at $15,850." The final award stated the arbitrator had found Han could not recover damages under the theory of damages he had pursued. As the arbitrator found Han "shall take nothing by [his] action against [Marmol]," the arbitrator found no prevailing party.

Han filed a motion to vacate the arbitration award, which was denied by the trial court. Han filed a notice of appeal, dated September 24, 2013.

Plaintiffs filed a motion for summary judgment in the underlying action; none of the moving or opposing papers is included in our record. That motion was heard on October 17, 2013. The trial court granted the motion on the ground that plaintiffs met their initial burden of showing Marmol could not prove damages. The court stated Han had not been awarded damages in the arbitrator's final award and Marmol would not be able to recover attorney fees that he had incurred in his defense at the arbitration hearing.

V.

PLAINTIFFS FILE THE INSTANT MALICIOUS PROSECUTION ACTION AGAINST DEFENDANTS.

In September 2014, plaintiffs filed a verified complaint for malicious prosecution against defendants, alleging defendants wrongfully initiated and maintained claims against them in the underlying action. The malicious prosecution complaint alleged the arbitrator had determined Marmol had misrepresented rental concessions in the estoppel certificates, but was not liable for damages because Han had not relied on the certificates and had performed no due diligence.

The malicious prosecution complaint alleged that after the arbitrator's final award was issued, plaintiffs' counsel contacted Madison Harbor, ALC, seeking to enter into a settlement agreement with regard to the underlying action, but Marmol and Madison Harbor, ALC, refused to settle and dismiss the underlying action. The malicious prosecution complaint also alleged that during his deposition taken in the underlying action, Marmol admitted he had signed estoppel certificates, knowing they had misrepresentations in them. The complaint further alleged Marmol acted maliciously in bringing the underlying action against plaintiffs because he knew his claims were not valid and because he "held feelings of hostility and ill will toward Plaintiffs."

VI.

DEFENDANTS FILE ANTI-SLAPP MOTIONS IN THE INSTANT MALICIOUS PROSECUTION ACTION; THE TRIAL COURT DENIES THE MOTIONS; DEFENDANTS APPEAL.

Marmol and Sabahat filed an anti-SLAPP motion in the malicious prosecution action. Madison Harbor, ALC, and Parvaneh filed a separate anti-SLAPP motion which joined in the statement of facts and request for judicial notice included in Marmol and Sabahat's motion. Evidence before the court in considering the motions included that Marmol never read the estoppel certificate before signing it, and did not admit otherwise; defendants initiated and maintained the underlying action in good faith;

sufficient evidence supported Marmol's claims; and defendants did not bear any ill will or malice toward plaintiffs.

The trial court denied the anti-SLAPP motions. In its minute order, the court stated that although defendants carried their burden of demonstrating the act underlying plaintiffs' malicious prosecution claim arose from protected activity, plaintiffs carried their burden of showing a probability of prevailing on their claim. As to the court's conclusion that plaintiffs showed a probability of prevailing on their malicious prosecution claim, the court did not identify what evidence supported each element of the claim. Instead, the court stated: "Marmol admitted in a deposition that at the time he signed the Estoppel Certificate on 6/27/05, he knew that item #7 was false, because he knew the tenant had been in default, had breached the lease, had received notice of default, and owed back rent." The trial court also stated that on May 28, 2013, plaintiffs' counsel received the arbitrator's final award in the Han action and immediately contacted Sabahat and explained that the underlying action should be dismissed. Defendants, however, "insisted on maintaining the action," thereby "forc[ing]" plaintiffs to file a motion for summary judgment which was granted.

The court further stated: "The burden shifts back to Defendants to show that [plaintiffs] were also responsible for preparing and transmitting the false estoppel certificate which gave rise to the Han lawsuit. But in their joint Reply, Defendants fails to present any rebuttal evidence whatsoever in support of their position."[7] The court granted plaintiffs' request for monetary sanctions in an amount to be determined by noticed motion, but "denies attorney fees" (underscoring omitted). Defendants appealed.

[7] The minute order also referred to Marmol's claims against Shafizadeh in the underlying action; Shafizadeh, however, was not a party to the malicious prosecution action.

DISCUSSION

I.

SECTION 425.16 AND STANDARD OF REVIEW

Section 425.16 provides for a special motion to strike "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (§ 425.16, subd. (b)(1).) "Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. [Citation.] If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) "'The defendant has the burden on the first issue, the threshold issue; the plaintiff has the burden on the second issue.'" (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928.) To establish a probability of prevailing on a claim, "'the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."'" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.)

We independently review the trial court's order denying an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) "'We consider "the

pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based." [Citation.] However, we neither "weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citation.]' [Citation.]" (*Id.* at p. 326.) We further observe that the anti-SLAPP statute is to be broadly construed. (§ 425.16, subd. (a).)

II.

DEFENDANTS MET THEIR BURDEN OF DEMONSTRATING THE ACT UNDERLYING PLAINTIFFS' MALICIOUS PROSECUTION CLAIM AROSE FROM PROTECTED ACTIVITY.

A defendant can meet his or her burden of making a threshold showing that a cause of action is one arising from protected activity by demonstrating the acts underlying the plaintiff's cause of action fall within one of the categories of section 425.16, subdivision (e). (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) Section 425.16, subdivision (e) provides in relevant part: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

Defendants met their burden of showing that plaintiffs' malicious prosecution claim was based on conduct protected by the anti-SLAPP statute. Plaintiffs' claim was based on defendants' act of filing the complaint in the underlying action, which squarely falls within section 425.16, subdivision (e)(1). In the respondents' brief, plaintiffs do not argue otherwise.

As defendants satisfied their burden of showing the conduct underlying plaintiffs' malicious prosecution claim came within section 425.16, subdivision (e)(1),

the burden shifted to plaintiffs to show a probability of prevailing on the merits of their claim.

III.

PLAINTIFFS FAILED TO CARRY THEIR BURDEN OF SHOWING A PROBABILITY OF PREVAILING ON THE MERITS OF THEIR CLAIM BECAUSE THEY DID NOT MAKE A PRIMA FACIE SHOWING OF MALICE.

The elements of a cause of action for malicious prosecution are (1) a favorable determination on the merits of the underlying action, (2) which was brought without probable cause, and (3) which was initiated or maintained with malice. (*Siebel v. Mittlesteadt* (2007) 41 Cal.4th 735, 740; *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 226 (*Daniels*).) For the reasons discussed *post*, the trial court erred by denying defendants' anti-SLAPP motions because plaintiffs failed to carry their burden of making a prima facie showing of the element that the underlying action was prosecuted by defendants with malice.

The California Supreme Court has explained that the malice element of malicious prosecution claims "'relates to the subjective intent or purpose with which the defendant acted in initiating the prior action. [Citation.] The motive of the defendant must have been something other than that of bringing a perceived guilty person to justice or the satisfaction in a civil action of some personal or financial purpose. [Citation.] The plaintiff must plead and prove actual ill will or some improper ulterior motive.'" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292, italics omitted.)

In *Daniels*, *supra*, 182 Cal.App.4th at page 224, a panel of this court stated that in the context of malicious prosecution claims, "[i]mproper purposes can be established in cases in which, for instance (1) the person bringing the suit does not believe that the claim may be held valid; (2) the proceeding is initiated primarily because of hostility or ill will; (3) the proceeding is initiated solely for the purpose of depriving

the opponent of a beneficial use of property; or (4) the proceeding is initiated for the purpose of forcing a settlement bearing no relation to the merits of the claim. [Citation.]"

As plaintiffs have provided no direct evidence of any malice by defendants in their prosecution of the underlying action, we consider whether plaintiffs have produced circumstantial evidence from which malice might be reasonably inferred. (*Daniels*, *supra*, 182 Cal.App.4th at p. 225 ["'Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence.'"].)

In their respondents' brief, plaintiffs argue that defendants "instituted the Underlying Action for an improper purpose because they knew that their claims were invalid, they harbored hostility and ill will, and they were attempting to force a settlement, or collect legal fees, by maliciously continuing a clearly meritless claim." Plaintiffs' argument is without merit.

Plaintiffs offer no evidence that defendants instituted the underlying action for an improper purpose. Plaintiffs further argue that defendants "knew that their claims were invalid when no damages were awarded against Marmol in the Han Action, because damages were an essential element of the claims," but they refused to dismiss the underlying action. This evidence does not show malice. True, plaintiffs' counsel contacted defendants' counsel immediately after the arbitrator issued the final award to request that defendants dismiss the underlying action. But the record does not show the final award had been confirmed at that point in time. Indeed, Han moved to vacate the award and, after his motion was denied, appealed. Han clearly believed he was entitled to an award of damages against Marmol. Had defendants dismissed the underlying action before the arbitration award was confirmed and Han's appeal was decided, they would have risked Han prevailing in overturning the portion of the final award denying him damages. In such an instance, defendants would be left without recourse against plaintiffs. Defendants' refusal to dismiss the underlying action before plaintiffs filed a

motion for summary judgment under those circumstances was not evidence of malice; indeed, it was reasonable.

In the respondent's brief, plaintiffs next argue: "Exacerbating their malice, [defendant]s openly displayed their hostility towards [plaintiff]s while at Marmol's deposition. At Marmol's deposition on March 5, 2013, [Madison Harbor, ALC]'s attorney, Barzin Sabahat brazenly and maliciously lifted his middle finger and angrily gestured a well-known communication to Shahi and Shafizadeh after Marmol had admitted that he knowingly signed the false Estoppel Certificate and it was mentioned that the ongoing prosecution of the matter constituted malicious prosecution." Plaintiffs further argue, "Sabahat's actions at the deposition demonstrate his, Parvaneh's, and [Madison Harbor, ALC]'s unwarranted taunting of Plaintiff and subjective intent in bringing the Underlying Action for an improper purpose."

Marmol did not testify that he had signed the estoppel certificate knowing, at that time, it contained inaccurate information. Marmol testified as follows:

"Q. Exhibit 11 is a tenant estoppel certificate; a California Association of Realtors form. Do you recall seeing this document before?

"A. Yes.

"Q. And when do you recall seeing this document?

"A. When I signed it, June 27th.

"Q. Okay. And when you signed it on June 27th, did you read it?

"A. To tell you the truth, no.

"Q. Huh?

"A. I signed a lot of documents for the sale, and I trust my agents."

Marmol later testified as follows:

"Q. Now, No. 7 on the tenant estoppel certificate says, Tenant represents that Tenant, A, is not in default of the performance of any obligations under the lease; B,

has not committed any breach of the lease; and C, has not received any notice of default under this lease which has not been cured. [¶] Do you see that representation?

"A. Yes.

"Q. As of June 27, 2005, however, you knew that not to be true, correct?

"A. Correct.

"Q. Okay. And—but you signed this anyways?

"A. Yes."

These deposition excerpts establish that at the time Marmol signed the estoppel certificate, it contained information that he knew to be incorrect. But because he did not read the estoppel certificate before signing it, he did not know then what it contained or that it contained incorrect information. Marmol's testimony on this point might be confusing, but it does not show defendants acted with malice in initiating and/or maintaining the underlying action.

As for plaintiffs' argument that Sabahat made a rude gesture during the deposition, which showed not only his own malice but the malice of all defendants against plaintiffs, plaintiffs rely on pages 229-230 of Marmol's deposition transcript, which recorded the following discussion.

"Mr. Sabahat: I'm sorry. I think your client wants to say something to me. [¶] Go ahead.

"Ms. Shafizadeh: No. I was talking to Peter [Shahi].

"Mr. Sabahat: You were saying something about you would love to sue me for malicious prosecution. Is that what you were saying?

"Mr. Shahi: No. That's not what I heard.

"Mr. Sabahat: You're not going to sue me for malicious prosecution, then? You're not making faces and gestures at me and my client?

"Ms. Shafizadeh: Well, after you just flicked me off—

"Mr. Sabahat: I didn't flick you off. I put my glasses up.

"Ms. Shafizadeh: Okay. Thank you.

"Mr. Sabahat: And then you flicked me off.

"Ms. Shafizadeh: Uh-huh.

"Mr. Sabahat: So as long as you want to act like a child, then you might want to put on the record how old you are.

"Ms. Shafizadeh: Thank you. You're old enough for all of us.

"Mr. Block [(Shafizadeh's counsel)]: Okay. Everybody, can we finish this up so I can get out of here?

"Mr. Sabahat: Absolutely, Counsel. I apologize. [¶] Sorry, Ms. Shafizadeh. That was unprofessional of me." (Some capitalization omitted.)

Plaintiffs do not cite any other evidence in the record, such as a declaration, which describes what actually transpired during that incident recorded in Marmol's deposition transcript. While the deposition transcript shows Sabahat negatively reacted when he thought he heard Shafizadeh say she would love to sue him for malicious prosecution, it does not support a finding that Sabahat, or any of the other defendants, bore the type of ill will or ulterior motive in pursuing the underlying action against plaintiffs. In any event, Sabahat's alleged conduct was directed at Shafizadeh, who was not a party to the malicious prosecution action. (Obviously, we do not approve of the alleged uncivil conduct nor do we approve of opposing counsel's comment about age, but this record falls far short of showing malice in initiating or maintaining the underlying action.)

Plaintiffs also argue that "[i]t was objectively clear that Marmol had no legal right to recover any fees and costs expended in the Han Action or fees paid to Shafizadeh and that the Underlying Action was a thinly veiled attempt to force settlement and/or further collect legal fees . . . , solely based on clearly meritless claims." Plaintiffs do not cite any evidence supporting the statement that it "was objectively clear that Marmol had no legal right to recover any fees and costs . . . paid to Shafizadeh." As

discussed *ante*, Shafizadeh was not a party to the malicious prosecution action and, thus, whether Marmol might have borne ill will or malice against her is not at issue. Furthermore, there is no evidence plaintiffs made any settlement offer or otherwise attempted to force a settlement in the underlying action.

On the other hand, in his declaration in support of Marmol and Sabahat's anti-SLAPP motion, Marmol stated, "I believed, and still believe that I had good cause to bring the Underlying Action against Plaintiffs. They breached their duties to me as my broker/agent when they failed to properly handle the sale of the Property and subjected me to liability, knowing I trusted Shahi to properly do his job and look out for my best interest. Shahi later lied to me about a listing agreement and tricked me into paying his attorneys' fees. I would never bring a lawsuit against anyone if I did not believe I had good cause to [do] so, and certainly believe I had good cause to bring the Underlying Action against Plaintiffs. I am not currently, nor have I ever acted maliciously toward Plaintiffs, nor have I ever harbored any feelings of hostility or ill will toward them."

In his declaration in support of Marmol and Sabahat's anti-SLAPP motion, Sabahat stated, "I believed, and still believe that I had good cause to represent Defendant Marmol in the Underlying Action against Plaintiffs. I would never represent a client in an action if I did not believe there was probable cause to pursue the action and I certainly believe there was probable cause to bring and maintain the Underlying Action against Plaintiffs. I am not currently, nor have I ever acted maliciously toward Plaintiffs, nor have I ever harbored any feelings of hostility or ill will toward them."

Finally, Parvaneh, in his declaration filed in support of Parvaneh and Madison Harbor, ALC's anti-SLAPP motion, stated, "[t]he other attorneys at Madison Harbor and I reviewed the law and evidence in support of the Underlying Action on behalf of Marmol. We were aware Plaintiffs denied Marmol's claims, but we believed in good faith that there was sufficient evidence to continue to prosecute the Underlying

Action. Neither I, nor any other attorney at Madison Harbor, bore any ill will or malice toward Plaintiffs, nor did we have any reason to do so."

Given the absence of evidence that would make a prima facie showing of the malice element of plaintiffs' malicious prosecution claim against defendants, the trial court erred by denying defendants' anti-SLAPP motions. We therefore do not need to address whether plaintiffs made a prima facie showing of the other elements of malicious prosecution, including whether defendants had probable cause to initiate and maintain the underlying action.

DISPOSITION

The order is reversed. Appellants shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.